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No. 14-1373

In the
Supreme Court of the United States

STATE OF UTAH,
Petitioner,

vs.

EDWARD JOSEPH STRIEFF, JR.,
Respondent.

On Writ of Certiorari
to the Utah Supreme Court

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Should evidence seized incident to a lawful arrest on an outstanding warrant be suppressed because the warrant was discovered during an investigatory stop later found to be unlawful?

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The Utah Supreme Court's opinion is reported at 2015 UT 2, 357 P.3d 532 (Pet. App. 1-36). That court reversed a Utah Court of Appeals decision reported at 2012 UT App 245, 286 P.3d 317 (Pet. App. 37-98). The intermediate court had affirmed the unreported order of the Utah Third District Court denying Strieff's motion to suppress (Pet. App. 99-103).

JURISDICTION

The Utah Supreme Court entered its judgment on January 16, 2015. On April 6, 2015, this Court extended the deadline to file a petition for a writ of certiorari to May 18, 2015 (14A1025). The State filed its petition on May 15, 2015, and this Court granted certiorari on October 1, 2015. This Court has jurisdiction under 28 U.S.C. § 1257(a) (2012).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

1. *Factual background.* Sometime before the investigatory stop at issue here, a judge issued an ar-

rest warrant for respondent Edward Strieff on a traffic matter. Pet. App. 5; J.A. 18-19. Strieff has never questioned the warrant's validity.

* * *

In December 2006, an anonymous caller left a message on a police drug-tip line reporting "narcotics activity" at a house in the City of South Salt Lake, Utah. Pet. App. 4. To corroborate the tip, narcotics detective Doug Fackrell—an 18-year law-enforcement veteran with specialized training in drug enforcement—intermittently watched the house for a total of about three hours over the course of a week. Pet. App. 4; J.A. 14-15. He saw some "short term traffic" at the house—visitors would arrive, enter, and leave within a few minutes. Pet. App. 4. In Detective Fackrell's experience, the short-term visits—though not "terribly frequent"—were more than those at a typical house and were consistent with drug-sale activity. *Id.*

While watching the house on December 21, 2006, Detective Fackrell saw Strieff leave the house, "the same as other people had done that [he'd] been watching." J.A. 21; Pet. App. 4. He had not seen Strieff enter the house. Pet. App. 4. After Strieff walked roughly a block, Detective Fackrell stopped him in a 7-Eleven parking lot. *Id.* at 4, 38.

Detective Fackrell identified himself, explained why he had been watching the house, and asked Strieff what he had been doing there. *Id.* at 4-5. De-

tective Fackrell also asked Strieff for identification and asked dispatch to run a warrants check. *Id.* at 5; J.A. 18. In response, dispatch told Detective Fackrell of the pre-existing arrest warrant. Pet. App. 5. Detective Fackrell—who had not previously known of the warrant—then arrested Strieff and, in a search incident to that arrest, found in Strieff's possession methamphetamine, a glass drug pipe, and a small plastic scale with white residue. *Id.* at 5, 101.

2. *Trial court proceedings.* The State charged Strieff with unlawfully possessing methamphetamine and drug paraphernalia. Pet. App. 5. Strieff moved to suppress the evidence seized in the search incident to his arrest, arguing that it was fruit of an unlawful investigatory stop. Pet. App. 5. Strieff did not argue that the warrant-arrest or the search incident to it were unlawful.

The prosecutor conceded that although the question was "extremely close," the facts available to Detective Fackrell at the time of the initial stop did not "quite meet the level of reasonable suspicion under" *Terry v. Ohio*, 392 U.S. 1 (1968). J.A. 24. Though courts would usually apply the exclusionary rule to suppress evidence seized in such stops, the prosecutor argued that—under the attenuation exception—the court should admit the evidence because the lawful arrest on a valid warrant was an intervening circumstance that purged the taint of any illegality in the initial investigatory stop. Pet. App. 5.

The state trial court agreed. It concluded that Detective Fackrell's initial stop "was not a flagrant violation of the Fourth Amendment." *Id.* at 102. And Detective Fackrell "did not exploit the initial unlawful detention to search" Strieff because "the search was conducted after discovering an outstanding warrant and arresting [Strieff] on that warrant, an intervening circumstance that [Detective] Fackrell did not cause and could not have anticipated." *Id.* at 102-03. Accordingly, the court denied the motion to suppress and a subsequent motion to reconsider. *Id.* at 6, 99-103; J.A. 29.

Strieff pleaded guilty to possession of drug paraphernalia and an amended charge of attempted possession of a controlled substance, reserving the right to appeal the order denying his motions to suppress and to reconsider. Pet. App. 6.[1]

3. *Utah Court of Appeals.* The Utah Court of Appeals affirmed in a 2-1 opinion. It agreed that the stop was not "in knowing or obvious disregard of constitutional limitations." *Id.* at 70. It found that the trial court's conclusion that Detective Fackrell's "conduct was neither purposeful nor flagrant" was

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[1] Utah law allows a defendant to enter a conditional guilty plea that reserves the right to appeal "the adverse determination of any specified pre-trial motion." Utah R. Crim. P. 11(j). If the defendant prevails on appeal, he may withdraw his guilty plea. *Id.*

"supported by the circumstances of the encounter as a whole." *Id.* at 71. It further agreed with the trial court that Detective Fackrell "'did not cause and could not have anticipated' discovery of the arrest warrant." *Id.* at 70. It concluded that Detective Fackrell's "misconduct amounted to a misjudgment, one of constitutional proportion certainly, but a single misstep over the constitutional boundary rather than a deliberate transgression." *Id.* at 71.

Accordingly, the court of appeals held that the arrest on "the preexisting warrant was an intervening circumstance that, coupled with the absence of purposefulness and flagrancy on the part of [Detective] Fackrell in detaining Strieff, sufficiently attenuated" the taint of the unlawful stop. *Id.* at 83-84.

4. *Utah Supreme Court.* The Utah Supreme Court granted certiorari and reversed. It acknowledged that Strieff was lawfully arrested on the outstanding warrant and lawfully searched incident to that arrest. *Id.* at 32. It nonetheless held that the lawfully seized evidence should be excluded because Detective Fackrell first learned of the warrant during an unlawful investigatory stop. *Id.* at 34. Breaking from what it admitted is the majority view—that a warrant-arrest is an intervening event that tends to attenuate the taint of prior unlawful conduct—the Utah court adopted a novel position: the attenuation exception does not apply *at all* when the intervening event is a warrant-arrest. *Id.* at 2-4, 27, 31. The

court based that conclusion on its view that the attenuation exception applies only to "intervening circumstances involving a defendant's independent acts of free will (such as a confession and perhaps a consent to search)." *Id.* at 25-27, 31.[2] The Utah Supreme Court believed that to the extent any exception to the exclusionary rule applies to the pre-existing warrant scenario, the inevitable discovery exception was a better fit. The court further reasoned that only one of those two exceptions can apply to any set of facts. *Id.* at 27, 31-34.

SUMMARY OF ARGUMENT

The exclusionary rule embodies no free-standing constitutional right. It is only a mechanism this Court created to deter police from violating constitutional rights. In the Fourth Amendment context, it deters future unlawful searches and seizures.

Suppressing the evidence seized from Strieff would not yield appreciable deterrence. Detective Fackrell's initial unlawful stop arose from an objectively reasonable misjudgment, not an obvious or reckless violation of Strieff's Fourth Amendment rights. And Detective Fackrell found the evidence in Strieff's possession in a search incident to an arrest

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[2] The Nevada Supreme Court has since reached the same conclusion. *See Torres v. State*, 341 P.3d 652, 658 (Nev. 2015), *Pet. for Cert. filed*, ___ U.S.L.W. ___ (U.S. June 26, 2015) (No. 15-5).

on a valid pre-existing warrant. That intervening warrant-arrest sufficiently attenuated the lawfully seized evidence from the unlawful stop such that suppression would not appreciably deter future misconduct.

1. The exclusionary rule's sole purpose is to deter future constitutional violations. Suppressing evidence under the rule imposes a high cost; excluding relevant, often crucial, evidence exacts a heavy toll on the truth-finding process because it may result in a criminal returning to society unpunished and free to commit further crimes. Given that high cost, the Court suppresses evidence only as a last resort, not as a first impulse. It limits the rule's application to circumstances when the potential to deter future police misconduct is sufficiently appreciable to justify suppression's high cost.

To that end, the Court has adopted exceptions to the rule, including the attenuation exception at issue here. Under the attenuation exception, intervening events between the initial illegality and the discovery of evidence may sufficiently remove the initial taint so as to make the evidence admissible. The attenuation analysis is a case- and evidence-specific one; this Court has never prescribed a rigid checklist of factors that courts must consider in *every* attenuation case. Rather, the core attenuation inquiry always remains the same: whether, because of the passage of time or other intervening circumstances,

suppression will so appreciably deter future Fourth Amendment violations that it justifies exclusion's high cost. Under this Court's precedents, that inquiry focuses on two critical components: the nature of the intervening event and the flagrancy of the initial violation.

This case involves a non-flagrant, unlawful stop of a suspect subject to an arrest warrant. Properly applied to those circumstances, the attenuation exception makes admissible evidence legally seized in a search incident to a warrant-arrest. Excluding such evidence would exact too high a cost for the marginal potential to deter future unconstitutional stops.

First, the significance of this particular intervening event—the warrant-arrest—makes suppression a poor deterrent. The warrant-arrest all but broke any connection between the prior unlawful stop and the evidence's discovery. Police have a legal duty to arrest a person subject to a warrant, and the Fourth Amendment permits searches incident to arrest. In light of the outstanding warrant, the evidence was lawfully seized in a lawful search incident to a lawful arrest. Suppressing evidence that by definition was lawfully seized serves no appreciable deterrence purpose.

Second, Detective Fackrell's stop here was not flagrantly unlawful. As the Utah intermediate appellate court recognized, Detective Fackrell's investigatory stop "amounted to a misjudgment" in applying

the law to the facts. Pet. App. 71. It was "a single misstep over the constitutional boundary." *Id.* The Utah Supreme Court did not disagree. When the detective's single misstep led to the discovery of an arrest warrant, he was duty bound to arrest Strieff, which in turn was the reason for the search.

Excluding evidence found during a lawful search incident to a lawful arrest in order to deter future unlawful stops is not the sort of appreciable deterrence that justifies exclusion's high cost.

2. The Utah Supreme Court reached a contrary, erroneous conclusion because it disregarded the exclusionary rule's controlling inquiry: whether excluding the evidence would appreciably deter future unlawful investigatory stops. Instead, it looked to what it believed to be the controlling features of the attenuation exception itself—factors this Court has considered to assess attenuation in certain circumstances. It held, based on those factors, that the attenuation exception applies only when the intervening event is an independent act of the defendant's free will.

To be sure, an independent act of a defendant's free will can attenuate the link between the unlawful conduct and the later discovery of evidence. But so can an arrest on a warrant previously issued by an independent judicial officer. In fact, the latter creates a significantly lower risk that police will exploit the initial unlawful conduct to seize evidence.

The Utah Supreme Court therefore improperly applied the exclusionary rule outside of the reason for the rule's existence, and it did so as a first impulse, not as a last resort.

ARGUMENT

I. THE EVIDENCE LAWFULLY SEIZED INCIDENT TO STRIEFF'S WARRANT-ARREST IS ADMISSIBLE UNDER THE ATTENUATION EXCEPTION TO THE EXCLUSIONARY RULE.

Suppressing evidence seized incident to a lawful warrant-arrest during a non-flagrant, unlawful stop will not appreciably deter future police misconduct.

A. Because the exclusionary rule exists only to compel respect for constitutional rights, it applies only when it appreciably deters future police misconduct.

The exclusionary rule forbids using at trial "evidence obtained as a direct result of an illegal search or seizure," as well as "evidence later discovered and found to be derivative of an illegality or 'fruit of the poisonous tree.'" *Segura v. United States*, 468 U.S. 796, 804 (1984) (quoting *Nardone v. United States*, 308 U.S. 338, 341 (1939)). The rule is a remedy "created by this Court to 'compel respect for the constitutional guaranty,'" and "'not a personal constitutional right.'" *Davis v. United States*, 131 S.Ct. 2419, 2426 (2011) (citations omitted).

That is why this Court long ago rejected the idea that the "identification of a Fourth Amendment violation" is "synonymous with application of the exclusionary rule to evidence secured incident to that violation." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). Not every Fourth Amendment violation merits suppression because excluding evidence "exacts a heavy toll on both the judicial system and society at large." *Davis*, 131 S.Ct. at 2427. The Court thus limits the exclusionary rule to circumstances when it "most efficaciously serve[s]" its remedial objective. *United States v. Calandra*, 414 U.S. 338, 348 (1974).

That remedial objective is straightforward—the exclusionary rule's "sole purpose . is to deter future Fourth Amendment violations." *Davis*, 131 S.Ct. at 2426. And this Court's cases identify limiting principles by which it determines whether exclusion most efficaciously serves that deterrence objective.

The decision to exclude evidence "'begin[s] with the premise that the challenged evidence is in some sense the product of illegal government activity.'" *Nix v. Williams*, 467 U.S. 431, 444 (1984) (citation omitted). But this Court has "declined to adopt a per se or 'but for' rule" that renders "inadmissible any evidence that came to light through a chain of causation that began with an illegal[ity]." *United States v. Leon*, 468 U.S. 897, 910-11 (1984). Causation is only a necessary—but not sufficient—predicate for suppression. *Hudson*, 547 U.S. at 592.

If a court finds causation, it may not exclude evidence unless doing so will "discourage law enforcement officials from violating the Fourth Amendment [in the future] by removing the incentive to disregard it." *Stone v. Powell*, 428 U.S. 465, 492 (1976). After all, that is why the Court adopted the exclusionary rule in the first place. *See Elkins v. United States*, 364 U.S. 206, 217 (1960). If officers know that courts will suppress evidence seized through unconstitutional conduct, they will be less likely to act unlawfully.

But the rule's focus on deterrence does not require suppressing everything "'which deters illegal searches.'" *Leon*, 468 U.S. at 910 (citation omitted). Exclusion must "yield '*appreciable* deterrence.'" *Davis*, 131 S.Ct. at 2426-27 (quoting *United States v. Janis*, 428 U.S. 433, 454 (1976)) (emphasis added). Suppressing evidence is a "drastic and socially costly" sanction. *Nix*, 467 U.S. at 442-43. "It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment." *Davis*, 131 S.Ct. at 2427 (citation omitted). Given that, the "deterrence benefits of suppression must outweigh its heavy costs." *Id.* (citations omitted).

Whether suppression's deterrence benefits outweigh its heavy costs depends largely on the officer's

culpability. *See Davis*, 131 S.Ct. at 2427-28. "When the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs." *Id.* at 2427 (quoting *Herring v. United States*, 555 U.S. 135, 144 (2009)). On the other hand, "when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot pay its way." *Id.* at 2427-28 (internal quotation marks and citations omitted).

Thus, the "harsh sanction of exclusion" is triggered "only when" the illegality is "deliberate enough to yield 'meaningfu[l]' deterrence, and culpable enough to be 'worth the price paid by the justice system.'" *Id.* at 2428 (quoting *Herring*, 555 U.S. at 144) (brackets in original). Suppression is not warranted for police mistakes short of "systemic error or reckless disregard of constitutional requirements." *Herring*, 555 U.S. at 147-48. A "criminal should not 'go free because the constable has blundered.'" *Id.* at 151 (quoting *People v. Defore*, 150 N.E. 585, 587 (N.Y. 1926) (Cardozo, J.)).

B. Under the attenuation exception, evidence is admissible when its discovery is so attenuated from the prior illegality that suppression would not appreciably deter future police misconduct.

Since adopting the exclusionary rule, this Court has developed various exceptions to it. The limiting principles discussed above animate those exceptions, which help to ensure that courts exclude evidence only when exclusion serves the rule's core purpose.

1. This case concerns the attenuation exception to the exclusionary rule. That exception considers whether "the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the 'taint' imposed upon that evidence by the original illegality." *United States v. Crews*, 445 U.S. 463, 471 (1980). The attenuation inquiry "'attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost.'" *Leon*, 468 U.S. at 911 (quoting *Brown v. Illinois*, 422 U.S. 590, 609 (1975) (Powell, J., concurring in part)).

Because "considerations relating to the exclusionary rule and the constitutional principles which it is designed to protect *must* play a factor in the attenuation analysis," *United States v. Ceccolini*, 435 U.S. 268, 279 (1978) (emphasis added), courts apply-

ing the attenuation exception must examine whether excluding the evidence will appreciably deter future constitutional violations. *Accord Brown*, 422 U.S. at 604 (applying attenuation exception with reference to "the [deterrence] policy served by the exclusionary rule").

Under this Court's precedents, deterrence depends largely on the nature of the intervening circumstances and "the culpability of the law enforcement conduct" in question. *Herring*, 555 U.S. at 143. The "purpose and flagrancy of the official misconduct" is "particularly" relevant in the attenuation analysis. *Brown*, 422 U.S. at 603-04.

2. To date, this Court has applied the attenuation exception to three different kinds of evidence obtained after a Fourth Amendment violation: confessions, lineup identifications, and live-witness testimony. But none of those cases announced a rigid list of factors governing the attenuation analysis in *every* case. Rather, the analysis with respect to each kind of evidence hinged on whether intervening events so attenuated the evidence from the initial illegality that exclusion would appreciably deter future constitutional violations. In each case, the Court tailored the considerations governing attenuation to the specific intervening events and challenged evidence before it.

Confessions. This Court first applied the attenuation exception to a confession obtained after an un-

lawful seizure. *Wong Sun v. United States*, 371 U.S. 471, 491 (1963). Wong Sun's initial arrest for drug crimes was unlawful, but he confessed days later and after a lawful arraignment. *See id.* In light of both the passage of time from the initial illegality and the intervening arraignment, the causal connection between the arrest and the confession "had 'become so attenuated as to dissipate the taint'" of the prior unlawful arrest. *Id.*

This Court expressly tied the attenuation analysis to the exclusionary rule's deterrence purpose in *Brown*, another confession case. Police officers unlawfully broke into Brown's apartment while he was gone, searched it, and arrested him—at gunpoint and without a warrant—when he returned home. *See* 422 U.S. at 593-94. At the police station, officers twice read Brown his *Miranda* rights. Brown nevertheless made statements in the ensuing hours that police turned into two written murder confessions. Brown signed the first confession, but refused to sign the second. *See id.* at 594-96. The state courts denied Brown's motion to suppress his confessions, agreeing with the State that the *Miranda* warnings were an intervening circumstance that necessarily attenuated Brown's confessions from his prior unlawful arrest. *See id.* at 596-97

This Court rejected the idea that *Miranda* warnings alone always sever the causal connection between an unlawful arrest and ensuing confessions.

See id. at 602. "If *Miranda* warnings, by themselves, were held to attenuate the taint of an unconstitutional arrest, regardless of how wanton and purposeful the Fourth Amendment violation, the effect of the exclusionary rule would be substantially diluted." *Id.* (citation omitted). Such a broad rule would potentially encourage unlawful seizures by sending the message that no matter how egregious the initial illegality or the exploitation of it to gain a confession, police could save the confession from exclusion merely by giving the warnings. *Id.*

Brown's core lesson is that whether a confession is sufficiently attenuated from an unlawful arrest "must be answered on the facts of each case," *id.* at 602, evaluated "in light of the [deterrence] policy served by the exclusionary rule," *id.* at 604. At least with respect to confessions, that requires courts to consider not only whether police gave *Miranda* warnings, but also the "temporal proximity of the arrest and the confession, the presence of [other] intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct." *Id.* at 603-04 (citations omitted).

As applied in *Brown*, those considerations made suppressing the confessions an appropriate remedy. Mere hours had passed between the unlawful arrest and Brown's statements. And the "impropriety" of the unlawful arrest was "obvious"—something the two detectives "virtually conceded" in acknowledging

that their purpose in unlawfully breaking into Brown's apartment and arresting him at gunpoint was to question him "in the hope that something might turn up." *Id.* at 605.

Lineup identifications. This Court also applied the attenuation exception to a defendant's identification in a lineup following his unlawful arrest. *See Johnson v. Louisiana*, 406 U.S. 356 (1972). Johnson moved to suppress the lineup identification as the fruit of that unlawful arrest.

This Court held that the lineup identification was not excludable. By the time of the lineup, Johnson had been "brought before a committing magistrate to advise him of his rights and set bail." *Id.* at 365. That, the Court reasoned, attenuated the link between the unlawful arrest and the challenged lineup identification because Johnson was by then "under the authority" of the committing magistrate rather than the unlawful arrest. *Id.* Consequently, "the lineup was conducted not by 'exploitation' of the challenged arrest but 'by means sufficiently distinguishable to be purged of the primary taint.'" *Id.* (quoting *Wong Sun*, 371 U.S. at 488).

Johnson's holding is at least impliedly linked to exclusion's deterrence purpose. The intervening circumstance—commitment by a magistrate—was significant. And the opinion does not suggest that the arrest was flagrantly unlawful, or that officers exploited the unlawful arrest to get the challenged

lineup identification. In such circumstances, excluding the lineup identification would do little to discourage future unlawful arrests.

Live-witness testimony. In *Ceccolini*, the Court applied the attenuation exception to hold admissible the live testimony of a woman whose identity as a witness was discovered through an unlawful search. 435 U.S. at 276. A police officer performed that unlawful search at a retail store, discovering evidence of illegal gambling activities. The store clerk, Lois Hennessey, implicated Ceccolini (without knowing of the unlawful search) and eventually voluntarily testified against Ceccolini before a grand jury investigating the gambling crimes. Ceccolini also testified before the grand jury and denied participating in gambling activities. The government ultimately charged Ceccolini with perjury for lying to the grand jury. *See id.* at 269-73.

This Court held that Hennessey's trial testimony was admissible because it was sufficiently attenuated from the officer's unlawful search in the retail store. *See id.* at 275-80. Once again, the Court focused on the exclusionary rule's deterrence objective. It emphasized that allowing a willing witness to testify would not incent police to conduct unlawful searches: "[t]he greater the willingness of the witness to freely testify, the greater the likelihood that he or she will be discovered by legal means, and concomitantly, the smaller the incentive to conduct an

illegal search to discover the witness." *Id.* at 276. The unique nature of live-witness testimony also supported the Court's conclusion that the cost of excluding a cooperative witness's testimony would be too high. "[S]uch exclusion would perpetually disable a witness from testifying about relevant and material facts, regardless of how unrelated such testimony might be to the purpose of the originally illegal search or the evidence discovered thereby." *Id.* at 277.

* * *

The foregoing cases teach that the considerations governing the attenuation analysis vary based on (1) the type of evidence alleged to be the fruit of the poisonous tree and (2) the circumstances of the case under review. But the attenuation inquiry's focus remains constant: whether "'the detrimental consequences of illegal police action become so attenuated'"—by time or other intervening circumstances—"'that the deterrent effect of the exclusionary rule no longer justifies its costs.'" *Leon*, 468 U.S. at 911 (quoting *Brown*, 422 U.S. at 609 (Powell, J., concurring in part)). That deterrence analysis focuses principally on the nature of the intervening circumstance and the culpability of the police misconduct.

C. Absent a flagrantly unlawful stop, suppressing evidence lawfully seized incident to an intervening warrant-arrest will not appreciably deter future police misconduct.

Like the intervening circumstances in *Wong Sun*, *Johnson*, and *Ceccolini*, a warrant-arrest can sufficiently attenuate evidence seized incident to that arrest from a prior non-flagrant, unlawful stop so as to make such evidence admissible.

1. In nearly all cases, excluding evidence lawfully seized incident to a warrant-arrest will not appreciably deter unlawful investigatory stops. An arrest warrant "'is a judicial mandate to an officer to . . . make an arrest, and the officer has a sworn duty to carry out its provisions.'" *Leon*, 468 U.S. at 921 n.21 (citation omitted). A "full search" of the arrestee is likewise reasonable under the Fourth Amendment. *United States v. Robinson*, 414 U.S. 218, 235 (1973). Even the Utah Supreme Court acknowledged that persons unlawfully stopped may be "lawfully arrested on an outstanding warrant" discovered during the stop, and that a search incident to that arrest is "perfectly appropriate." Pet. App. 32. Thus, suppression in a case like this cannot be justified as deterring the lawful arrest or the lawful search incident to arrest. *See New York v. Harris*, 495 U.S. 14, 20 (1990) (holding that the statement a suspect made while "in legal custody" was admissible because suppression would "not serve the purpose" of

the warrant requirement, which police had previously violated by a warrantless, in-home arrest).

Nor can extending the exclusionary rule to such lawfully acquired evidence generally be justified as necessary to deter unlawful investigatory stops in the first instance. In the vast majority of investigatory stops, officers will not find a pre-existing arrest warrant. The discovery of an outstanding warrant is an unlikely and chance event—one upon which an officer cannot safely rely. *See United States v. Green*, 111 F.3d 515, 523 (7th Cir. 1997) (recognizing that it is "the unusual case where the police, after a questionable stop, discover that [a detainee] is wanted on an arrest warrant"); *People v. Brendlin*, 195 P.3d 1074, 1081 (Cal. 2008), *cert. denied*, 556 U.S. 1192 (2009) (same). And officers know that, in the usual case, courts will suppress evidence discovered in an unlawful stop. This Court has long recognized that threat of suppression to be a substantial and abiding deterrent to unlawful police stops. *See, e.g.*, *Elkins*, 364 U.S. at 217 (concluding that exclusionary rule is "the only effectively available way" to deter future police misconduct).

Brown's concern—that officers have a guaranteed cure for their unlawful conduct merely by giving *Miranda* warnings after an unlawful arrest and before a defendant confesses—finds no analogue here. If *Miranda* warnings were sufficient to attenuate a confession from an unlawful arrest, officers could

disregard the Fourth Amendment as a matter of course, safe in the knowledge that *Miranda* warnings would cure the illegality in every case.

But unlike *Miranda* warnings given after an unlawful arrest, a pre-existing arrest warrant will not give officers a known, guaranteed fix before they conduct an unlawful stop. Officers cannot count on finding a warrant to effectively cure their constitutional violations. A warrant results entirely from the independent happenstance of a prior judicial finding of probable cause to arrest the stopped suspect on an unrelated crime, a predicate event completely outside officers' control. Thus, admitting evidence seized incident to a search on a lawful warrant-arrest would not "allow 'law enforcement officers to violate the Fourth Amendment with impunity,'" *Dunaway v. New York*, 442 U.S. 200, 219 (1979) (citation omitted); in most cases, no warrant will be found to save them from their misconduct. *See Harris*, 495 U.S. at 20 (concluding that "the principal incentive to obey" the warrant requirement for in-home arrests "still obtains" where police know that violations will result in suppression). Because suppression in these circumstances "fails to yield 'appreciable deterrence,' exclusion is 'clearly . . unwarranted.'" *Davis*, 131 U.S. at 2426-27 (quoting *Janis*, 428 U.S. at 454).

2. Any marginal potential to deter future unlawful investigatory stops does not justify the exceptionally high cost of suppressing evidence lawfully seized

incident to an intervening warrant-arrest. Since *Leon*, this Court has "recalibrated [the] cost-benefit analysis in exclusion cases to focus the inquiry on the 'flagrancy of the police misconduct' at issue." *Davis*, 131 S.Ct. at 2427 (quoting *Leon*, 468 U.S. at 909, 911). The assessment of flagrancy is "particularly" relevant in attenuation analysis, *Brown*, 422 U.S. at 604, just as it is in cases applying the good-faith exception to the exclusionary rule, *see Herring*, 555 U.S. at 143.

Indeed, *Brown's* flagrancy inquiry parallels the flagrancy inquiry in good-faith cases. "When the police exhibit deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs." *Davis*, 131 S.Ct at 2427 (internal quotation marks and citation omitted). But when they "act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force." *Id.* (internal quotation marks and citation omitted). That standard is not unlike the one applied in qualified immunity cases, which "gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2085 (2011).

And this Court has repeatedly made clear that courts analyze deterrence and culpability using an

"objective" inquiry, "not an inquiry into the subjective awareness of arresting officers." *Herring*, 555 U.S. at 145 (internal quotation marks and citations omitted). The flagrancy assessment is thus "'confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the [stop] was illegal' in light of 'all of the circumstances.'" *Id.* (quoting *Leon*, 468 U.S. at 922 n.23). To the extent that language in this Court's prior attenuation cases can be read to suggest that the inquiry turns on the arresting officer's subjective beliefs[3]—a reading some lower courts have adopted[4]—that language cannot be reconciled with this Court's acknowledgement that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the

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[3] *See, e.g.*, *Ceccolini*, 435 U.S. at 279-80 (refusing to apply exclusionary rule partly because there was "not the slightest evidence to suggest" that officer's unlawful search was done "with the intent of finding tangible evidence bearing on an illicit gambling operation" or "with the intent of finding a willing and knowledgeable witness to testify against respondent"); *Brown*, 422 U.S. at 605 (concluding that officers arrested petitioner "in the hope that something might turn up").

[4] *See, e.g.*, *Brendlin*, 195 P.3d at 1081 (finding that record did not show the officer "'invented a justification for the traffic stop'") (citation omitted); *State v. Frierson*, 926 So.2d 1139, 1144-45 (Fla. 2006) (finding that record did not show the stop was "pretextual or in bad faith"), *cert. denied*, 549 U.S. 1082 (2006).

officer." *Horton v. California*, 496 U.S. 128, 138 (1990). To eliminate any confusion, this Court's opinion here should make clear that the flagrancy assessment in attenuation cases is an objective one.

Such an objective assessment counsels against excluding evidence seized incident to a warrant-arrest performed during an unlawful stop—like this one—based on "a misjudgment"; a "single misstep over the constitutional boundary" rather than an obvious Fourth Amendment violation. Pet. App. 71. Police errors of that sort are "far removed from the core concerns that led [this Court] to adopt the rule in the first place." *Herring*, 555 U.S. at 144. A warrant-arrest performed during a stop based on a reasonable misjudgment in applying the law to the facts parallels the kind of conduct that this Court has emphasized does not justify the harsh penalty of exclusion. *See, e.g., id.* at 145 (holding that evidence was admissible when obtained by objectively reasonable but mistaken reliance on a warrant's existence).

In fact, from *Herring*'s conclusion—that suppression serves no deterrence purpose when officers arrest a suspect pursuant to a *nonexistent* warrant—it surely follows that suppression would serve no deterrence purpose when officers arrest a suspect, like Strieff, pursuant to an *actual* warrant.

Those same principles also explain why the attenuation exception would not save evidence seized following an intervening warrant-arrest when police

discover the warrant in a random, dragnet-type, or otherwise arbitrary stop. Police should know that such conduct is "obvious[ly]" unlawful, *Brown*, 422 U.S. at 605, making suppression a potentially appropriate remedy to discourage other officers from "reckless[ly] disregard[ing] . . . constitutional requirements," *Herring*, 555 U.S. at 147-48. And targets of random or dragnet-type stops "not named in warrants would have good Fourth Amendment claims" for damages against the officers. *Atkins v. City of Chicago*, 631 F.3d 823, 827 (7th Cir. 2011). That suppression or damages may be warranted in response to such flagrant violations, however, only bolsters the conclusion that courts should admit the evidence when the violation is an objectively reasonable good-faith mistake.

3. The conclusion that a warrant-arrest can attenuate the taint of a prior unlawful stop is consistent with the cost-benefit analysis in this Court's prior attenuation cases. As discussed, "[n]o single fact is dispositive" to the analysis, which "must be answered on the facts of each case," *Brown*, 422 U.S. at 603, in light of "the fundamental tenets of the exclusionary rule," *Ceccolini*, 435 U.S. at 274, and the "constitutional principles which it is designed to protect," *id.* at 279.

Most important, an arrest on an outstanding warrant is an "intervening circumstance[]," *Brown*, 422 U.S. at 603, of considerable significance. Com-

pared to a defendant's confession or consent-to-search, a warrant-arrest represents "an even more compelling case for the conclusion that the taint of the original illegality is dissipated." *Green*, 111 F.3d at 522. Unlike a confession or consent-to-search, "[a] warrant is not reasonably subject to interpretation or abuse." *Brendlin*, 195 P.3d at 1080 (citing *Green*, 111 F.3d at 522). The validity of a pre-existing warrant does not turn on an evaluation of the complex "workings of the [defendant's] mind," *Brown*, 422 U.S. at 603—it is "completely independent of the circumstances that led the officer to initiate" the stop, *Brendlin*, 195 P.3d at 1080. It results from a judicial officer's prior assessment that all constitutional prerequisites to arresting the suspect had been satisfied on facts unrelated to the stop under review. In that regard, a warrant-arrest closely resembles the "lawful arraignment" of a defendant before the confession, *Wong Sun*, 371 U.S. at 491, or the "commitment" by a magistrate before a defendant's lineup, *Johnson*, 406 U.S. at 365—intervening circumstances that purged the taint of prior police misconduct.

Accordingly, unless a flagrant illegality led to the warrant's discovery, excluding evidence lawfully seized incident to a warrant-arrest cannot pay its way.

D. Because Detective Fackrell's investigatory stop was not flagrantly unlawful, suppressing the evidence lawfully seized incident to Strieff's arrest will not appreciably deter future misconduct.

Detective Fackrell's investigatory stop of Strieff was not flagrantly unlawful. Strieff's arrest on the outstanding warrant was therefore an intervening event that severed the causal link between the unlawful arrest and the evidence such that excluding it will not appreciably deter future unlawful stops.

To justify an investigatory stop, an officer must be able to identify "specific and articulable facts which, taken together with rational inferences from those facts," *Terry*, 392 U.S. at 21, support a reasonable belief that "criminal activity may be afoot," *id.* at 30. That calculus "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citation omitted). Although the reasonable suspicion standard requires more than "a mere 'hunch,'" it presents a relatively low bar: "the likelihood of criminal activity need not rise to the level of probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." *Id.* at 274.

Here, police received an anonymous tip that "narcotics activity," including "short stay traffic," was occurring in a house. J.A. 15; Pet. App. 4. Detective Fackrell intermittently watched the house for some three hours over the course of a week. J.A. 16. He saw short-stay traffic that, although "not terribly frequent," was "frequent enough that it raised [the] suspicion" of this experienced and well-trained narcotics detective, and corroborated the tip. J.A. 16; *cf. State v. Alverez*, 2006 UT 61, ¶18, 147 P.3d 425 (recognizing two short-term visits from same individual as consistent with drug-dealing). The visits were "more than" the detective would "see at a regular house" and their duration was significant—visitors would "stay and then leave" within "[j]ust a couple of minutes." J.A. 16-17, 23. So when Detective Fackrell saw Strieff leave the house, "the same as other people had done," he stopped Strieff to ask "what he was doing there." J.A. 18, 20-21.

The prosecutor later conceded that although the question was "extremely close," the facts "d[id]n't quite meet the level of reasonable suspicion." J.A. 24. The Utah Supreme Court implied that the missing fact was Strieff's arrival time—a fact necessary for Detective Fackrell to infer that he was another short-term visitor buying drugs. *See* Pet. App. 5 (observing that Detective Fackrell "had not seen Strieff enter the house" and thus "did not know how long [Strieff] had been there"). But no court has questioned that Detective Fackrell's decision to stop

Strieff under those facts was anything more than "a misjudgment"—"a single misstep over the constitutional boundary"—rather than an obvious Fourth Amendment violation. Pet. App. 71.

This Court recently recognized that an anonymous tip "can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion' when combined with sufficient corroboration, which may include the confirmation of predicted behavior or even innocent details. *See Navarette v. California*, 134 S.Ct. 1683, 1688 (2014). And it is not unreasonable for an officer to infer that visitors to a home are engaged in a common enterprise with its residents. *Cf. Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999) (recognizing reasonable inference that "a car passenger . . will often be engaged in a common enterprise with the driver"). In light of this Court's jurisprudence and the totality of the circumstances, a "'reasonably well-trained officer'" in Detective Fackrell's shoes could reasonably misjudge that those facts amounted to reasonable suspicion that Strieff was either a short-term visitor buying drugs or a resident selling them. *Herring*, 555 U.S. at 145 (quoting *Leon*, 468 U.S. at 922 n.23).

Given the tip, Detective Fackrell's efforts to corroborate it, and this Court's Fourth Amendment jurisprudence, it cannot be said that the investigatory stop was an "obvious" Fourth Amendment violation, *Brown*, 422 U.S. at 605, or that Detective Fackrell

otherwise acted in "reckless disregard of constitutional requirements." *Herring*, 555 U.S. at 147-48. The stop was at worst a "reasonable but mistaken judgment[]" in applying the reasonable suspicion standard to the facts confronting the detective at the time of the stop. *al-Kidd*, 131 S.Ct. at 2085.

Because Detective Fackrell's initial stop of Strieff was not flagrantly unlawful, suppressing the evidence seized incident to the intervening warrant-arrest will not appreciably deter future unlawful stops. Accordingly, the attenuation exception makes that evidence admissible.

II. THE UTAH SUPREME COURT ERRONEOUSLY HELD THAT THE ATTENUATION EXCEPTION NEVER APPLIES TO THE PRE-EXISTING WARRANT SCENARIO.

The Utah Supreme Court held that the attenuation exception does not apply to intervening warrant-arrests for three reasons. First, it read this Court's cases as applying the exception only to intervening circumstances that involve a defendant's independent acts of free will, such as a confession or consent to search. Pet. App. 27-31. Second, it reasoned that the "discovery of an outstanding warrant" during an unlawful stop cannot be considered an "intervening" or "superseding" cause under the tort theory of proximate causation. Pet. App. 28-29. Third, it concluded that applying the exception in this context would

"eviscerate" or "swallow" the inevitable discovery exception. Pet. App. 31-34.

The Utah Supreme Court's reasoning cannot be squared with the lessons of this Court's attenuation cases. First, as explained, the attenuation exception not only applies to scenarios other than those involving a suspect's free will but is also particularly well suited to promoting the exclusionary rule's deterrence purpose in the pre-existing warrant scenario. Second, the attenuation exception derives from the deterrent value of suppression, not from the tort theory of proximate causation. Finally, exceptions to the exclusionary rule are not mutually exclusive; suppression is not warranted if any one of them applies.

A. The attenuation exception is well suited to promoting the exclusionary rule's deterrence purpose in the pre-existing warrant scenario.

The Utah Supreme Court concluded that the attenuation exception applies only when the evidence obtained after an unlawful stop "involv[es] a defendant's independent acts of free will," such as a confession or consent to search. Pet. App. 27. It based that conclusion on its mistaken belief that "[t]o date, the United States Supreme Court's attenuation cases have all involved *confessions* made by unlawfully detained individuals." *Id.* at 20 & n.4 (citing *Kaupp v. Texas*, 538 U.S. 626 (2003); *Taylor v. Alabama*, 457

U.S. 687 (1982); *Dunaway*, 442 U.S. at 219; *Brown*, 422 U.S. at 605; *Wong Sun*, 371 U.S. at 478-79). It then reasoned that the factors this Court applied in confession cases to assess attenuation were "ill-suited to the outstanding warrant scenario." Pet. App. 30.

The Utah court's conclusion proceeds from two faulty premises. First, as discussed in Section I.B *supra*, this Court has applied the attenuation exception to hold admissible two kinds of evidence that have nothing to do with a defendant's independent acts of free will: (1) live-witness testimony by persons *other than* the defendant, *Ceccolini*, 435 U.S. at 275-78; and (2) a lineup identification of the defendant obtained after the defendant's unlawful arrest when the defendant was being held on a magistrate's commitment, *Johnson*, 406 U.S. at 365. The Utah Supreme Court's assumption that *Kaupp*, *Taylor*, *Dunaway*, *Brown*, and *Wong Sun* "is a complete list of United States Supreme Court cases applying the attenuation doctrine," Pet. App. 20 n.4 (emphasis omitted), is therefore wrong.

Overlooking *Ceccolini* and *Johnson* led the Utah Supreme Court to its second faulty premise—that *Brown* announced a rigid list of factors governing the analysis in *every* attenuation case. If that premise were true—and it is not—*Johnson* (which predates *Brown* by three years) and *Ceccolini* (which did not apply the three *Brown* factors) necessarily were

wrongly decided. And because those cases are correct, the Utah Supreme Court should have instead followed *Ceccolini*'s teachings that the factors relevant in any given attenuation case are drawn from "the fundamental tenets of the exclusionary rule," 435 U.S. at 274, and will vary depending on the nature of the intervening circumstance, *id.* at 278-79. *Ceccolini* itself finds support in *Brown*'s statement that "[n]o single fact is dispositive" to the attenuation analysis, which "must be answered on the facts of each case." 422 U.S. at 603.

The latitude this Court affords for context-specific attenuation analysis logically follows from the Court's equally longstanding recognition that "considerations relating to the exclusionary rule and the constitutional principles which it is designed to protect *must* play a factor in the attenuation analysis." *Ceccolini*, 435 U.S. at 279 (emphasis added). The "harsh sanction of exclusion" is triggered "only when" the illegality is "deliberate enough to yield 'meaningfu[l]' deterrence, and culpable enough to be 'worth the price paid by the justice system.'" *Davis*, 131 S.Ct. at 2428 (quoting *Herring*, 555 U.S. at 144) (brackets in original). *Ceccolini* and *Brown* reflect the flexibility courts need to ensure their analysis focuses on those proper ends.

The Utah Supreme Court's error epitomizes the error that lower courts commit in the attenuation analysis when the intervening event is a warrant-

arrest: courts become preoccupied with whether all of the factors that *Brown* identified as relevant to attenuation in confession cases would be logically relevant in the outstanding-warrant scenario, and treat *Brown* as creating a rigid test for *all* attenuation cases rather than setting forth considerations relevant to a confession case. *See* Pet. App. 27-31. Those errors stem from treating the factors as ends in themselves, rather than as a means to the end of resolving the controlling question: Will applying the exclusionary rule in the circumstances under review appreciably deter future constitutional violations?

B. The attenuation exception is not based on the tort theory of proximate causation, but on the deterrent value of suppression.

The Utah Supreme Court also held that "to the extent the attenuation doctrine is about" the tort theory "of proximate cause," the "discovery of an outstanding warrant," Pet. App. 29, cannot be treated as an intervening circumstance "sufficient to break the proximate connection to the initial violation of the Fourth Amendment," *id.* at 28. In the court's view, a warrants check "is part of the natural, ordinary course of events arising out of an arrest or detention," so "even if the warrant could be thought of as somehow intervening, it would hardly be unforeseeable"—a requirement for finding a superseding cause under tort law. *Id.* at 29.

This conclusion also proceeds from two faulty premises. First, the intervening circumstance is not the "discovery of an outstanding warrant," but the warrant-arrest itself. Second, the attenuation exception is not based on the tort-law concept of proximate cause. Rather, the exception "'attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the *deterrent effect of the exclusionary rule no longer justifies its cost*.'" *Leon*, 468 U.S. at 911 (quoting *Brown*, 422 U.S. at 609 (Powell, J., concurring in part)) (emphasis added). Attenuation turns on "a rigorous weighing of [exclusion's] costs and deterrence benefits," with particular focus "on the 'flagrancy of the police misconduct' at issue." *Davis*, 131 S.Ct. at 2427 (citations omitted). An obvious Fourth Amendment violation or reckless disregard for Fourth Amendment rights supports exclusion, but officers' misconduct based on "an objectively 'reasonable good-faith belief' that their conduct is lawful" weighs against it. *Id.* Tort principles provide no basis for refusing to apply the attenuation exception in the outstanding-warrant scenario.

C. Exceptions to the exclusionary rule are not mutually exclusive; suppression is not warranted if any one of them applies.

Finally, the Utah Supreme Court held that the attenuation exception cannot apply to the pre-existing warrant scenario because to do so would "eviscerate" or "swallow" another exception to the

exclusionary rule—the inevitable discovery exception. Pet. App. 31-34. According to the court, the facts in cases involving a pre-existing warrant resemble those in cases applying the inevitable discovery exception: both involve "two parallel acts of police work—one unlawful and the other lawful." *Id.* at 3. The court thought it "entirely arbitrary to subject most lawful police work (pursued in tandem with *unlawful* activity) to the high bar of inevitable discovery while lowering the bar for arrests incident to an outstanding warrant." *Id.* at 34. Accordingly, the court concluded that this Court's precedents "dictate the applicability" of the inevitable discovery exception, rather than the attenuation exception, to outstanding warrant cases. *Id.* at 3.

That conclusion also rests on a faulty premise—that the exclusionary rule's exceptions are mutually exclusive. They are not. Each exception to the exclusionary rule is a means to enforce the rule's limited purpose of appreciably deterring future constitutional violations. That end does not require courts to apply one—and only one—exception to a particular scenario. More than one exception can apply to any given set of facts. And if a court decides that one exception does not apply, nothing in the exclusionary rule precludes it from considering whether another exception might apply. *Cf. Crews*, 445 U.S. at 470 (not taking issue with lower court considering "whether *any* of three commonly advanced exceptions to the exclusionary rule—the 'independent

source,' 'inevitable discovery,' or 'attenuation' doctrines—nonetheless justified" the admission of evidence) (emphasis added).

The Utah Supreme Court's concern about improperly intruding on territory somehow reserved for the inevitable discovery exception is groundless in any event. The inevitable discovery exception permits admitting evidence when a court cannot say that "the challenged evidence would not have been obtained *but for* [the] constitutional violation." *United States v. Scott*, 270 F.3d 30, 44-45 (1st Cir. 2001) (emphasis added). That, in turn, ensures that the government will "not [be] put in a worse position simply because of some earlier police error or misconduct." *Nix*, 467 U.S. at 443. The inevitable discovery exception homes in on the predicate for exclusion: whether the evidence was *necessarily* the product of unlawful police conduct. When police inevitably would have found the evidence through separate legal means, it cannot be said in the broader picture that the evidence was necessarily the product of the unlawful conduct.

In contrast, the attenuation exception *presumes* that the challenged evidence would not have been obtained *but for* the constitutional violation, but nevertheless allows the evidence's admission *despite* that unlawful conduct when, because of intervening circumstances, "'the deterrent effect of the exclusionary rule no longer justifies its costs.'" *Leon*, 468

U.S. at 911 (quoting *Brown*, 422 U.S. at 609 (Powell, J., concurring in part)). If the requirements of either exception are met, exclusion is not appropriate.

The Utah Supreme Court recognized that there had been no showing that "Strieff might ultimately have had [the] contraband in his possession on any future date on which he may have been arrested on the outstanding warrant." Pet. App. 32-33. And indeed, for that reason, an inevitability showing is "difficult at best" when outstanding warrants are discovered during an unlawful stop. Pet. App. 32. But that misses the point. The ultimate question is whether excluding the lawfully seized evidence would appreciably promote the exclusionary rule's purpose. The Utah Supreme Court never answered that question.

* * *

The evidence that Detective Fackrell lawfully seized from Strieff following his lawful warrant-arrest should be admissible under the attenuation exception to the exclusionary rule. Detective Fackrell's investigatory stop was not flagrantly unlawful. Accordingly, the evidence did not come "by exploitation" of the challenged stop, but "by means sufficiently distinguishable to be purged of the primary taint," *Wong Sun*, 371 U.S. at 488—the lawful arrest on the outstanding warrant. In these circumstances, excluding the lawfully seized evidence will

not appreciably deter future unlawful investigatory stops.

CONCLUSION

This Court should reverse the judgment of the Utah Supreme Court.

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